lottesville. The ticket agent in Charlottesville by mistake wrote Thelma on the ticket instead of Selma. On boarding the Atlantic Coast Line train at Richmond, the plaintiff was told by the conductor that the ticket was not good. The plaintiff explained how the mistake occurred and offered to pay for a telegram to Harrisonburg to ascertain whether or not he had paid the proper fare. The plaintiff would have paid the fare from Richmond to Selma, but did not have sufficient money to do so. The conductor ejected him from the train neither paying attention to the explanation nor to the offer to pay for the telegram. It was held that the plaintiff was entitled to recover for the wrongful ejection.

These cases look rather to the hardship worked on the passenger by the rules of the carrier than to the inconvenience that the carrier will be put to. They recognize the fact that the conductor often uses his position arbitrarily to enforce indignities upon the passenger. But in the absence of such action on the part of the conductor, it seems that the result of the second and third views is practically identical, the only difference being in regard to the conductor's duty to heed the reasonable explanation of the passenger.

THE CONSTITUTIONALITY OF THE SELECTIVE DRAFT LAW.—In order to carry on the war, declared by the United States against Germany, an Act of Congress was passed on May 18th, 1917, requiring all persons between certain ages to register for military duty. Several cases have arisen since the passage of this Act, questioning its constitutionality. It has been attacked on the ground that, (1) Congress has no power to pass such an act, (2) it takes away the common law rights to remain within the realm, (3) it calls out the militia for foreign service, which is in contravention of the Constitution, (4) it is in contravention of the Thirteenth Amendment, prohibiting involuntary servitude, and (5) it constitutes class legislation.

The Constitution of the United States empowers Congress "To raise and support armies." [1] The means by which this is to be done are not specified. But it is provided that: "The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." [2] And it is also a well established rule of construction that the grant of a power carries with it by necessary implication all incidental powers necessary to put into effect the power granted. For to give Congress the power and not the means to carry this power into effect would be a contradiction in terms. However, it is contended that

[1] Art. I, sec. 8, clause 12.
[2] Art. I, sec. 8, clause 18.

Congress has no power that is not granted to it in express terms.[3] But this rule can have no application where the power exercised is one that is necessarily implied, for it would render nugatory practically every power of Congress, since these powers are granted in broad terms with the mere matters of detail left to be supplied as Congress may deem best. And, in fact, the last stated rule is fast becoming dead-letter, for the tendency since the Civil War has been to give greater powers to the Federal Government, and to minimize the powers of the States. Therefore, even though Congress is not given the power, in express terms, to pass a conscription act, the right to pass such an act is necessarily implied in the grant of the power to raise armies.

The right of Congress to pass such an act can be sustained under another Constitutional provision. It is provided that Congress shall have power "to provide for the common defense and general welfare of the United States." [4] This is the great reservoir of power of the Federal Government. There is no express provision of the Constitution authorizing Congress to enact criminal laws, to construct the Panama Canal, or to make the "Louisiana Purchase," and yet these laws, and numerous others of the same character, are clearly justified under the above provision. Clearly, the power to pass a conscription act is included within the power "to provide for the common defense."

The Supreme Court in *Tarble's Case* [5] said:

> "Among the powers assigned to the National government, is the power 'to raise and support armies,' and the power 'to provide for the government and regulation of the land and naval forces.' The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. It can determine, without question from any State authority, how the armies shall be raised, whether by voluntary enlistment or forced draft, the age at which the soldier shall be received, and the period for which he shall be taken, the compensation he shall be allowed, and the service to which he shall be assigned."

During the Civil War draft laws were passed both by the Union and the Confederacy. The constitutionality of these laws was sustained by the courts [6] of both the North and the South. The Supreme Court of Georgia, in the case of *Jeffers* v. *Fair*,[7] which arose under a Confederate Constitutional provision identical with the provision in the Constitution of the United States, said:

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[3] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Tenth Amendment.

[4] Art. I, sec. 8, clause 1.

[5] 13 Wall. 408.

[6] Kneedler *v.* Lane, 45 Pa. St. 238; Burroughs *v.* Peyton, 16 Gratt. (Va.) 470; Jeffers *v.* Fair, 33 Ga. 347.

[7] 33 Ga. 347, 351.

"We understand the rule of construction in such cases to be, that 'An unqualified grant of power gives the means necessary to carry it into effect, * * * Presuming that the framer of the Constitution used the words employed in their ordinary unambiguous significance, we hold that the clause, *ex vi termini,* expresses a grant of power—of power commensurate with the object—of power over the population of the several States, * * *. Undoubtedly, voluntary enlistment as a means, would always be preferred, when efficacious, to compulsory enrollment, but in many cases, a limitation to the former would render the power barren."

And beyond these powers expressly or impliedly given is the inherent right of every nation, however created, to require its every man to take up arms in the defense of the native land.[8] When the national existence is at stake, the privileges and liberties experienced in times of peace must give way to military necessity and the laws and usages of war. In the case of *Burroughs* v. *Peyton,*[9] arising under the Confederate Constitution, the Supreme Court of Virginia said:

"The power of coercing the citizens to render military service, is indeed a transcendent power, in the hands of any government; but so far from being inconsistent with liberty, it is essential to its preservation. A nation cannot foresee the dangers to which it may be exposed; it must therefore grant to its government a power equal to every possible emergency; and this can only be done by giving to it the control of its whole military strength."

John Quincy Adams in a speech[10] in 1836 said:

"In the authority given to Congress by the Constitution of the United States to declare war, all the powers, incident to war, are by necessary implication conferred upon the government of the United States. Now, the powers incidental to war are derived, not from any internal, municipal source, but from the laws and usages of nations. * * * The war power is limited only by the law and usages of nations. The power is tremendous. It is strictly constitutional, *but it breaks down every barrier so anxiously erected for the protection of liberty, property, and life.*"

At common law it was held to be the right of every man "to remain within the realm." It is claimed that this common law right relieves against military service beyond the borders of the

[8] Burroughs *v.* Peyton, *supra.*
[9] 16 Gratt. (Va.) 470, 473.
[10] Quoted in part in the argument in Ex parte Milligan, 4 Wall. 2, 104.

United States. It is a well settled principle, necessitating the citation of no authority, that the Constitution of the United States is the supreme law of the land and common law principles do not prevail against its provisions. Nor has any court the power to declare an act of Congress invalid because it is inimical to the common law.[11] Since the Constitution gives Congress the power to provide for the common defense, the power to send armies where military tactics demand is necessarily implied. It is well known that the best defensive is a good offensive.

The contention that the Selective Draft Act calls out the militia for foreign service, and is therefore in contravention of the Constitution, has no force at this time. The Constitution provides that Congress shall have power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions."[12] This seems to imply that Congress has no power to send the militia beyond the borders of the United States.[13] But by an act[14] passed on July 1st, 1916, the President was given the power to call the militia into Federal service, thus making it a part of the Federal army. Therefore the militia no longer exists as such. Furthermore, if Congress has the power to draft any citizen into military service, it has the power to draft the members of the militia also.[15] And it seems, also, that to call forth the militia to prosecute war is included within the power "to provide for calling forth the militia to execute the laws of the Union."[16]

In the recent case of *Story* v. *Perkins,* 243 Fed. 997, the constitutionality of the Selective Draft Law was attacked on the ground that it is in contravention of the Thirteenth Amendment, which prohibits slavery and involuntary servitude. The Court held in an able opinion that the Act did not violate the Thirteenth Amendment, for "to agree to this contention we must conclude that a soldier is a slave." Military service is a public duty, just as is the duty to serve on juries, and no one would ever contend that compulsory jury service is involuntary servitude.[17] The Supreme Court of California, in the case of *Claudius* v. *Davie,*[18] upheld the constitutionality of the Act.

> "Per Curiam. Application for a writ of prohibition, based on the claim that the act of Congress approved May 18th, 1917, providing for what is known as the selective draft for military service, is in violation of section 1, art. 13, of the Federal Constitution, and section 18, art. 1, of the Constitution

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[11] Townsend *v.* State, 147 Ind. 624, 47 N. E. 19.
[12] Art. I, sec. 8, clause 15.
[13] Jeffries *v.* Fair, *supra.*
[14] Supplement to U. S. Comp. Stat. '16, sec. 3050c.
[15] United States *v.* Sugar, 243 Fed. 423.
[16] United States *v.* Sugar, *supra.*
[17] United States *v.* Sugar, *supra.*
[18] 165 Pac. 689.

> of this state, prohibiting 'slavery' and 'involuntary servitude.' The claim is utterly without merit. The application is denied."

Such a brief opinion, in which the Court deemed it unnecessary to cite authority to sustain their view, clearly shows that this contention is absurd on its face.

The contention that the Act constitutes class legislation may be true, but it does not affect the constitutionality of the Act, because Congress is not prohibited from passing class legislation. The Fourteenth Amendment is directed solely against the States, and imposes no restrictions whatever on the Federal Government.[19]

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[19] Flint *v.* Stone Tracy Co., 220 U. S. 107; United States *v.* Sugar, *supra.*